

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 25-cv-80785-REINHART

JOSUE BATISTA,

Plaintiff,

vs.

MICHAEL SABA,

Defendant.

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**OMNIBUS REPORT AND RECOMMENDATION AND ORDER DIRECTING
THE CLERK OF COURT TO ASSIGN A DISTRICT JUDGE
[ECF Nos. 6,7]**

Plaintiff, Josue Batista, initiated this action alleging discrimination under 42 U.S.C. § 1981 and breach of contract. ECF No. 9. According to the Amended Complaint, Mr. Batista is a commercial tenant and the Defendant, Michael Saba, is his landlord. *Id.* A summons has been issued, but the Defendant has not yet appeared. ECF No. 10.

Plaintiff moves for a temporary restraining order (TRO) and seeks leave to deposit his rent into the court registry. ECF Nos. 6,7. In support, Plaintiff says Defendant has been engaging in “a persistent and escalating course of conduct intended to intimidate, harass, and retaliate against [Plaintiff].” ECF No. 6 at 1. Plaintiff also says “Defendant made direct threats regarding [Plaintiff’s] business lease and livelihood...disabled [signage’s] electrical connections, delayed approvals, allowed unpermitted construction, and disrupted business. *Id.*

Upon review, Plaintiff has failed to meet the requirements necessary for a TRO. In his Amended Complaint, Plaintiff alleges that the Defendant has been blocking rent payment access and rejecting valid payment attempts. ECF No. 9 at 3. But, the Motion for TRO fails to sufficiently demonstrate, (1) a substantial likelihood of success on the merits, (2) that irreparable injury will be suffered if relief is not granted, (3) that the threatened injury outweighs harm relief would inflict on the non-movant, (4) and that entry of relief would serve public interest. *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223 (11th Cir. 2005).

The District Court should therefore exercise its discretion under Federal Rule of Civil Procedure 65(b) to allow the Defendant to be heard and deny Plaintiff's Motion without prejudice to renew after the earlier of (1) the Defendant's appearance or (2) the expiration of the deadline for the Defendant's appearance.

A party may deposit property or funds in the court registry "if any part of the relief sought is a money judgment or the disposition of a sum of money [] on notice to every other party and by leave of court." Fed. R. Civ. P. 67. Here, there is no indication that the Defendant has been put on notice. See ECF No. 7. Accordingly, Plaintiff's Motion should be denied without prejudice.

REPORT AND RECOMMENDATION

For these reasons, this Court **RECOMMENDS** that the District Court DENY Plaintiff's Motion for a Temporary Restraining Order and Plaintiff's Motion for Leave to Deposit Funds without prejudice.

DISTRICT JUDGE ASSIGNMENT

Pursuant to Administrative Order 2025-11, I submit my findings in a Report and Recommendation because the Plaintiff has not yet been given an opportunity to be noticed of the opt-out procedures on Magistrate Judge Jurisdiction. **Accordingly, the Clerk of Court is DIRECTED to assign a District Judge to adjudicate this matter.**

NOTICE OF RIGHT TO OBJECT

A party shall serve and file written objections, if any, to this Report and Recommendation with the assigned District Judge, within **FOURTEEN (14) DAYS** of being served with a copy of this Report and Recommendation. Failure to timely file objections shall constitute a waiver of a party's "right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions." 11th Cir. R. 3-1 (2016).

DONE and SUBMITTED in Chambers at West Palm Beach, Palm Beach County, in the Southern District of Florida, this 7th day of July 2025.

A handwritten signature in black ink, appearing to read "Bruce Reinhart", is written over a horizontal line.

BRUCE E. REINHART
UNITED STATES MAGISTRATE JUDGE